

October 5, 2001

Helen Golde, Chief  
Conservation Policy and Planning Branch  
Office of National Marine Sanctuaries  
1305 East-West Highway, 11<sup>th</sup> Floor  
Silver Spring, MD 20910

**RE: Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries**

Dear Ms. Golde:

The Advisory Council for the Monterey Bay National Marine Sanctuary appreciates the opportunity to provide comments on the August 2001 Fair Market Value Analysis for submerged fiber optic cables in national marine sanctuaries. The Monterey Bay National Marine Sanctuary is our country's largest national marine sanctuary and this Advisory Council is comprised of 20 representatives of the central California community, including user groups and government agencies.

The Advisory Council has been integrally involved in commenting on past policy initiatives related to submerged fiber optic cables. We submitted comments regarding the Department of Commerce's proposed rule on "Installing and Maintaining Commercial Submarine Cables in the National Marine Sanctuaries" in an October 23, 2000 letter submitted to Debra Malek of the National Marine Sanctuary Program (NMSP). We also submitted comments on the December 2000 version of the Fair Market Value Analysis in a letter dated March 23, 2001 to Dan Basta, Director of the NMSP. It is our understanding that our March 23, 2001 letter was not considered part of the official record. We hereby resubmit that letter as an attachment and ask that it be entered into the record at this time.

As an initial matter, we are concerned with the Department of Commerce's (DOC) failure to adopt policy guidance regarding the fiber optic cables in sanctuaries since issuing a proposed rule on the subject in August of 2000. We urge the DOC and the NMSP to move forward and adopt sound policies governing any future proposals for fiber optic cable installations in marine sanctuaries. At a minimum: the Advisory Council believes that a cable proponent must show there is no practical alternative to a sanctuary route and must prove actual demand for the additional cable capacity. We strongly oppose use of the national marine sanctuaries for speculative commercial development.<sup>1</sup>

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<sup>1</sup> According to an August 26, 2001 article in the Anchorage Daily News regarding a capacity glut in the fiber optic cable industry, "analysts estimate that less than 3 percent of the nation's fiber capacity is actually being used." Tony Hopfinger "Gamble on undersea highway fails", Anchorage Daily News. August 26, 2001.

The Advisory Council is concerned that the August 2001 Fair Market Analysis does not specifically acknowledge the special protected status of national marine sanctuaries. We urge the Department of Commerce and the Sanctuary Program to ensure that fees for potential cable projects are set at a level that clearly discourages placement of commercial cables within the boundaries of a sanctuary. As noted in our October 2000 letter, installations of fiber optic cables (and all forms of commercial development of the seabed) are generally incompatible with the National Marine Sanctuaries Act. We do believe that NOAA should recognize a distinction between cables laid for commercial purposes and those for research designed to further understanding of sanctuary resources and conducted in a manner that protects sanctuary resources. The second category of cable can be permitted in sanctuaries with conventional permit authority. Payment of fair market value fees is not appropriate in the case of cables installed for purely research purposes.

The Advisory Council is also concerned that the August 2001 version of the Fair Market Value Analysis continues to exclude data from submerged fiber optic cable projects in California from the trend analysis and calculation of average fees for historical transactions. According to the Report, these data were “excluded for the sake of keeping overland rights of way separate from undersea routes.” However, because national marine sanctuaries are, by definition, undersea, we believe that data points for submerged cable routes are particularly relevant to any fair market value analysis and should be included. Excluding these timely and coastal data points unreasonably skews the average fee towards a smaller value.

Our comments on the Fair Market Value analysis assume cable companies will receive other permit conditions that require them to conduct or fund monitoring as to the effects of cable construction. Also, we are assuming that the Department of Commerce will separately require important surveys as to whether or not the cable stays buried, and to mitigate any damage done. If these assumptions are not correct, and if the fees charged for the Fair Market Value will pay for those costs, we believe you must factor those into the ultimate fee assessment so that the individual sanctuary site does not have to pay those costs from its limited operating budget.

We also believe the Department of Commerce should commit to use fiber optic cable fair market value fees exclusively for the national marine sanctuary program. More importantly, we believe at least 50% of the assessed fees must remain at the sanctuary site that hosts the submerged commercial cable and suffers the impacts associated with cable installation. The remainder of the assessed fees should go solely to the national program and be exclusively used to fund the extensive policy and planning work promised by the Department of Commerce in the August 2000 proposed rule on cable installations in marine sanctuaries. Specifically, funds should be used for research and implementation of cable corridors and mapping of critical habitat areas, locations of submerged cultural resources, and other areas to be avoided.

Thank you for your consideration of these comments.

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Sincerely,

Stephanie Harlan, Chair  
Sanctuary Advisory Council